respect, I cannot accept this bare contention. Section 4(5) clearly provides for the application of the Criminal Procedure Code *"save as modified or extended by this Act."*

The question must then remain whether section 14 is a modification or extension of the Criminal Procedure Code. In my view and with respect, section 14 is both a modification and an extension. The right of the child or young person who is a party to the criminal action has been preserved. And it is now extended to his parent or guardian, a person who would not normally come within section 302 of the Criminal Procedure Code as not being a party to the action. Then, applying the ordinary rules of construction to a penal statute, and especially the rule that *"Generalia specialiabus non derogant"*, section 14 must be seen to deprive the Public Prosecutor of his competency to appeal from a decision of the Juvenile Court. To this extent, it is therefore a modification of the Criminal Procedure Code.

This must, in my view, seem to be so, because if it is merely intended to extend the right of appeal to the father or guardian, it would be a redundancy to reaffirm the right of the child or young person who is the subject of Juvenile Court proceedings. Further, it would have been sufficient and would be normal drafting practice to provide that nothing in this section should be taken to render void the provisions of appeal in the Criminal Procedure Code. Or, section 14 could have been expressed to say that in addition to the Public Prosecutor or child or young person, the parent or guardian of the child or young person may appeal.

Consequently I take the view that on a proper and reasonable construction of section 14, the enumeration of the persons given the right to appeal in a Juvenile Court case must mean that by deliberate exclusion, the Public Prosecutor is not competent to prefer an appeal.

An effort was made to salvage the proceedings by stressing the use of "may" in section 14 on the contention that an appeal was discretionary, and therefore the Public Prosecutor was not excluded. But in the nature of things, appeals have always been matters of deliberate election and no legislature can direct any person to do any act which it is within his own choice either to do or not to do. What the legislature can do is to provide access to a superior court and to limit, if it so chooses, such access to such persons as it deems proper, in the scheme it has for the administration of justice in the country.

The appeal is therefore dismissed on the lack of competency of the Public Prosecutor to prefer an appeal in a Juvenile Court decision.

Appeal dismissed.

SING LIAN EXPRESS SDN. BHD. v. SOH KIM TEE

[O.C.J. (Syed Othman J.) March 23, 1974]
[Johor Bahru — Originating Summons No. 48 of 1973]

Land Law — Sale of land — Option to purchase — Caveat — Ex parte extension — Caveatable interest — Whether option holder has — National Land Code, ss. 326, 327.

The applicant gave the respondent on receipt of $1000, an option to be exercised within a certain period for the sale of the applicant's land. The respondent exercised the option, offered to pay the deposit and asked the applicant to sign a draft agreement. The applicant refused to sell the land and sign the agreement.

The respondent thereupon lodged a caveat against the land and filed an action against the applicant for specific performance or alternatively for damages for breach of contract.

The applicant caused a notice of intended removal of the caveat pursuant to the provisions of the National Land Code to be served on the respondent. The respondent made a successful *ex parte* application for the caveat to be extended until the final disposal of the court action. This application by the applicant was to set aside the caveat on the grounds that the *ex parte* extension of the caveat had been issued without the applicant having had an opportunity of being heard and that the respondent was not a person entitled to claim title to or a registrable interest in the land.

Held: (1) a *prima facie* case had been made out for the extension of the period of the caveat and in addition there were only a few days before the expiry of the period allowed by the National Land Code for the notice of intended removal of the caveat. The circumstances clearly required that the court should act *ex parte* and it did so;

(2) the applicant was not thereby under the provisions of the National Land Code shut out from its rights to challenge the extension of life of the caveat as it had by means of this application;

(3) as the respondent had given irrevocable proof of his willingness to purchase the land, an offer had been made to pay the deposit and a draft agreement prepared, he therefore had a caveatable interest.

Cases referred to:-

(1) *Koh Peng Moh* v. *Yahiya* [1965] M.L.J. 230.

(2) *McCallum* v. *Hicks* [1950] 2 K.B. 271.

ORIGINATING SUMMONS.

Navaratnam for the applicant.

Gan Kim Seng for the respondent.

Syed Othman J.: The applicant (the company) seeks to set aside a caveat issued by this court. These are the circumstances which led the court to issue the caveat: On 14th November, 1972 the applicant on receipt of $1,000 gave the respondent an option to be exercised by 30th November, 1972, for the sale of the company's land, held under Certificate of Title 989, Lot No. 2922 and measuring 118 acres 1 rood 10 poles, for $8,000 per acre. On the 15th November, 1972 the respondent with his solicitor went to see the managing director of the company in Malacca. On the respondent's instruction, the solicitor exercised the option, offered to pay 10% deposit ($94,000) and asked the managing director to sign a draft agreement which had been prepared. The managing director refused to sell the land and sign the draft agreement. The solicitor and the respondent left the managing director. On

9th December, 1972 a caveat was lodged against the land. The respondent also filed an action against the company for specific performance, alternatively, damages for breach of contract. On 20th January, 1973 the company caused a notice of intended removal of the caveat issued by the Registrar of Titles, Johore under section 326 of the National Land Code (the Code) to be served on the respondent. On 24th January, 1973 the respondent made an application *ex parte* for the caveat to be extended until the final disposal of the court action. On 14th February, 1973 the caveat was extended.

The grounds on which the applicant seeks to set aside the caveat are in effect that (1) the court was wrong in having issued the caveat *ex parte*, as the company had not been given an opportunity of being heard before the grant of the extension; and (2) the respondent is not a person entitled to claim title to or a registrable interest in the land.

Ground (1): Sub-sections (1) and (2) of section 326 of the Code provide:

"(1) Any person or body whose land or interest is bound by a private caveat may at any time apply to the Registrar for its removal pursuant to this section, and the Registrar shall —

(a) serve upon the person or body at whose instance the caveat was entered a notice of intended removal in Form 19c; and

(b) subject to sub-section (2), remove the caveat at the expiry of the period of one month specified in that notice.

(2) The court may, on the application of any person or body on whom such a notice has been served (and acting, if the circumstances so require, *ex parte*), from time to time extend the said period of one month; and the Registrar, on being duly served with any order of the court under this sub-section, shall not remove the caveat until the expiry of the said period as thereby extended."

In the application for extension of the caveat it was shown that the respondent had the option, the company had refused the exercise of the option within the time specified in the option, and the respondent had filed an action in court with a view to enforcing his legal rights under the option affecting the land. *Prima facie* a case was made out for the extension of the period of the caveat. The application first came before the court on 12th February, 1973. The court considered that it would be prejudicial to the respondent if the order was made for service to be effected on the company, as there were a few days left before the expiry of the period of one month allowed by section 326(1)(b) of the Code for the notice of intended removal of the caveat. The circumstances clearly required that the court should act *ex parte* and the court did so. But this does not mean that the company is completely shut out from its rights to challenge the extension of the life of the caveat granted by the court, as under section 327 of the Code it may come to the court at any time and apply for the removal of the caveat. The company is doing this very thing by this application. Section 327(1) reads:

"Any person or body aggrieved by the existence of a private caveat may at any time apply to the court for an order for its removal, and the court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just."

Ground (2): It is urged that the option was not an option in the true sense of the word as by the option the respondent was only appointed an agent, who was to seek a buyer and would be entitled to 2% commission.

The question whether or not the option intends to appoint the respondent merely as an agent and nothing more, and does not intend that he should exercise the option himself, would be a matter of evidence at the trial of the action now pending. For the moment I need only concern myself with the question whether he has a caveatable interest. On the face of the option, it does not appear to prevent the respondent from exercising it himself, or that the company would be selective as to whom it would sell the land. There is no reply to the deposition of the respondent that the managing director of the company had refused to sell the land because he had another purchaser who would pay more for the land.

It is also argued that the document is an inchoate agreement and it becomes complete only upon the signing of a formal agreement. Reliance for this argument is placed on *Koh Peng Moh* v. *Yahiya*,[1] where Winslow J. held that the exercise of an option to sell land at a stipulated price within a prescribed time, subject to a formal contract, cannot be regarded as a concluded contract giving rise to a remedy in damages for breach thereof, until a formal contract had in effect been concluded.

This case must be distinguished from the present case. In the present case there is no mention in the option that its exercise would be subject to a formal contract. The respondent by an affidavit shows conclusively that he was willing to purchase the land at the stated price. It also shows that an offer was made to pay 10% deposit ($94,000) which, I presume, is usual in a purchase of this nature; that a draft agreement had been prepared inviting the company to state the date when the balance of $849,600 was to be paid, and stipulating that the respondent was to forfeit the deposit if the balance was not paid within the time to be prescribed in the agreement; and that the managing director refused to accept the deposit and to sign the draft agreement. In other words, the respondent gave an irrevocable proof of his willingness to purchase the land; see *McCallum* v. *Hicks*,[2] referred to by Winslow J. in his judgment.

In the circumstances shown in the present case, I hold that the respondent has a caveatable interest. The application is dismissed with costs to the respondent.

Application dismissed.

Solicitors: *Yau Jiok Hua & Co.; Gan & Lim.*